

PATENT COOPERATION TREATY

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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DIARY ENTRY	
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PCT

URQUHART-DYKES & LORD
10 DEC 2001
NEWCASTLE

WRITTEN OPINION

(PCT Rule 66)

Date of mailing
(day/month/year)

06.12.2001

Applicant's or agent's file reference P400001WO	REPLY DUE	within 3 month(s) from the above date of mailing
International application No. PCT/GB01/00222	International filing date (day/month/year) 23/01/2001	Priority date (day/month/year) 25/01/2000
International Patent Classification (IPC) or both national classification and IPC H01J37/317		
Applicant EVER 1391 LIMITED et al.		

1. This written opinion is the first drawn up by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I Basis of the opinion
- II Priority
- III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV Lack of unity of invention
- V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI Certain document cited
- VII Certain defects in the international application
- VIII Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis. For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 25/05/2002.

Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized officer / Examiner Gols, J
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Formalities officer (Incl. extension of time limits) Schuster-Kaechele, W Telephone No. +49 89 2399 2281	
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I. Basis of the opinion

1. With regard to the **elements** of the international application (Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"):

Description, pages:

1-8 as originally filed

Claims, No.:

1-20 as originally filed

Drawings, sheets:

1/2-2/2 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:

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- the drawings, sheets:
5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c));
(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)
6. Additional observations, if necessary:

VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

s separate sheet

VIII

1. Reference is made to the following documents:

D1: BATZILL M ET AL: 'Preferential sputtering induced stress domains and mesoscopic phase separation on CaF₂(111)' PHYSICAL REVIEW LETTERS, 24 JULY 2000, APS, USA, vol. 85, no. 4, pages 780-783, XP002167056 ISSN: 0031-9007

2. Claim 1:

- a. According to the method of claim 1, a thin surface layer of first material is provided on a substrate so that, due to stresses at the interface of the layer and the substrate, the formation of separated regions of the first material on the substrate is caused.

This is not in line with what is mentioned in the description. As is clear from the description (starting from page 6, second section, first line), Irradiation of the substrate by means of an ion beam causes ejection of atoms from the substrate and the stress field at the interface between the thin layer and the substrate causes formation of separate regions.

Consequently, the claim should state in appropriate wording that the particle beam together with the stress fields causes the formation of the separate regions. At present the reader is led to believe that the particle beam does not play a role in the formation of these regions (cf in claim 1, second section) since the particle beam is said to influence the direction of alignment and/or the relative positions of these regions only (cf the last section of claim 1).

- b. When amending claim 1 in order to overcome the above-mentioned objection, the dependent claims (where appropriate) should be amended as well (see, e.g. dependent claim 2 which, in its present form, is also not in line with the description as well).

3. Claim 20:

Claim 20 contains a reference to the description and the drawings. According to Rule 6.2(a) PCT, claims should not contain such references except where absolutely necessary, which is not the case here. The claim should therefore be deleted.

4. The features of the claims should be provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
5. It is noted that D1 is indicated as a P-document. The applicant should ensure that an amended independent claim 1 should be defined in such a manner that the claimed priority remains valid in view of the priority document of the present application. If it turns out that the amended claim is drafted in such a manner that the claimed priority date becomes invalid, D1 will be used as normal prior art and will be cited under Rule 64.1 PCT. Due to the relevance of D1 it then will be used for questioning the presence of an inventive step in the present application.
6. In order to facilitate the examination of the conformity of the amended application with the requirements of Article 34(2)(b) PCT, the applicant is requested to clearly identify the amendments carried out, no matter whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based (see also Rule 66.8(a) PCT).

If the applicant regards it as appropriate these indications could be submitted in handwritten form on a copy of the relevant parts of the application as filed.